

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 99-0502P

Sales & Use Tax

Calendar Years 1995, 1996, & 1997

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed on an use tax assessment resulting from a Department audit for the calendar years 1995, 1996, & 1997.

The taxpayer manufactures steel slabs that are further processed into coils of steel. The coils are sold to customers who use the coils as raw material incorporated into the item the customer is producing. The taxpayer has one location which is Portage Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The negligence penalty is the result of use tax assessed on the purchase of non-production equipment, parts, and supplies.

The taxpayer argues the negligence penalty should be waived as the taxpayer performed their tax duties in a good faith manner. As a result of the prior audit, the taxpayer instituted a self-assessing use tax remittance system and has remitted use tax to the State of Indiana on 75% of the use tax due from the audit period.

The Department agrees the taxpayer instituted a self-assessing use tax remittance system; however, adherence to tax duties decreased over time. In 1997, the error rate increased to 35%.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

The Department finds the taxpayer inattentive to tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department denies the taxpayer's penalty protest.

FINDING

The taxpayer's penalty protest is denied.

TB/RAW/JMS 992810